IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2169 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIROZ RUSTOMJI BHARDA

Versus

STATE OF GUJRAT

Appearance:

1. Criminal Misc.Application No. 2169 of 1999

MR KB ANANDJIWALA for Petitioners No. 1-4

MR VM PANCHOLI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR NANDISH CHUDGAR, Advocate for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/12/2001

ORAL JUDGEMENT

The petitioners herein are accused persons in an

FIR lodged by respondent No.2 with Jalalpur Police Station of Navsari District vide CR No. I-10/1998 for offences punishable under Sections 506(2), 504 and 114 IPC.

2. Brief facts as alleged in the FIR are that the complainant - respondent No.2 was at the relevant time Manager of Bank of India, Vijalpore Branch. Petitioner No.1 was then working as cashier. He was on sick leave. He resumed office on 19th January, 1998, and on being asked by the complainant to produce a fitness certificate, petitioner No.1 used abusive language and disturbed the atmosphere in the Bank. He snatched the muster-roll from the complainant and signed therein. Thereafter, he captured the cashier's cabin and continued to use abusive language. Other three petitioners were in the Bank who were instigating petitioner No.1. According to the complainant, when he tried to persuade petitioner No.1 for not behaving in this manner, the petitioners gave them threat to his life. The atmosphere was therefore spoiled in the bank; the working became difficult for some time. Petitioner No.1 unauthorisedly and forcibly captured certain vouchers from another officer of the Bank. This episode continued for the whole day till 5.30 in the evening. Thereafter petitioner No.1 gathered the neighbouring people and threatened Manager as well as the other staff members of the Bank.

3. The petitioners seek quashment of the FIR on various grounds. The first ground that indicated is that the FIR is lodged belatedly. Second ground is that the FIR is lodged to settle accounts with the petitioners by illegally roping them in with the crime. The scores are sought to be settled by lodging this false FIR, offences alleged are not constituted and the petition may therefore be allowed.

4. Learned Advocate Mr. Anandjiwala appearing for the petitioners and submitted that the incident had occurred in the opening hours of the Bank at about 10.45 hours on Jan. 19, 1998. The FIR is lodged at 21.25 hours on that day. Therefore after due deliberations the FIR is lodged. To indicate that the incident did not occur in the manner in which it is alleged, Mr. Anandjiwala has drawn attention of this Court to an inter-office communication dated Jan. 20, 1998 Annexure "G", wherein there is absolutely no reference to any intimidation or threat to the life, person or property of the complainant. There is nothing on record to implicate petitioners Nos. 2, 3 and 4. Even the report does not

indicate use of abusive language. He therefore contended that the FIR is an after-thought, given with a view to settle the scores with petitioner No.1 who had been having rough times in his service and the petition may therefore be allowed.

5. Mr. Chudgar, learned Counsel appearing for respondent No.2 has opposed this petition. According to him, petitioner No.1 in company with petitioners Nos. 2 to 4, had created an atmosphere of terror in the Bank, had intimidated the complaint and therefore the FIR was lodged. The FIR was lodged a little late because the complainant was not in a position to lodge the FIR immediately because of his duties and the delay may not come in the way of the complainant at this stage. The offences are constituted, they directly implicate the petitioners and therefore the petition may be dismissed.

6. Learned Additional Public Prosecutor has adopted the arguments advanced by learned Advocate for respondent No.2.

7. Having regard to the contentions raised before this Court, what transpires from the material produced on record is that petitioner No.1 and the complainant were the employees of the Bank at the relevant time working in the same Branch. It also transpires that they were not sailing smooth administratively and the grievances against petitioner No.1 were ventilated by the complainant in his communication dated 10th January, 1998; then the FIR is lodged wherein besides petitioner No.1, the other petitioners are also indicated to have instigated petitioner No.1. Filthy language is alleged to have been used by petitioner No.1 and threat to life is also alleged in the FIR. Against this, in a confidential communication addressed by the complainant to his superiors on the next day, there is absence of any such allegation of use of filthy language and intimidation by petitioner No.1. There is not even a passing reference to the presence of rest of the petitioners. He had complained to the Manager, Bank of India on 10th January, 1998 regarding non-issuance of draft to him. Later on, on 12th Jan. 1998, he lodged a complaint before Chief Judicial Magistrate, Navsari vide Criminal Case No. 6/98 for offences punishable under Sections 409 and 418 of IPC. Mr. Anandjiwala places on record a simple copy of the Criminal Case No. 6/98. All these incidence indicate that the relations were strained between the parties.

8. Considering that the confidential communication

to the superiors does not indicate use of any intimidation or filthy language; does not indicate presence of petitioners Nos. 2 to 4, and considering that the FIR is lodged after about 10 hours. It seems to be a clear case of settlement of scores by implicating the accused persons and hence, a misuse of process of Court. The Court is therefore inclined to exercise powers under Section 482 of the Cr.P.C and quash the complaint. The complaint is quashed. Rule made absolute.

(A.L.Dave,J.)

*/Mohandas